BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JESSE L. WALLACE	
VS. Claimant	Dooket No. 201 209
K & W TAX SERVICE, INC.) Docket No. 201,398
Respondent AND	
STATE FARM INSURANCE COMPANY Insurance Carrier)

ORDER

Claimant appeals from a Preliminary Hearing Order entered by Administrative Law Judge Alvin E. Witwer, dated September 18, 1995, denying claimant's request for temporary total disability and medical benefits.

Issues

The issue to be determined on appeal is whether claimant's injury arose out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties the Appeals Board finds claimant's injury did arise out of and in the course of his employment and the decision of the Administrative Law Judge should be reversed.

Claimant is the president of the respondent corporation which provides income tax and accounting services for individuals and businesses, including a number in the Kansas City, Kansas area. The date of the accident, March 10, 1995, claimant left his office about 6:30 p.m., dropped off mail at a postal station and stopped at the Fasone's Supper Club, one of his accounting clients. He did not go into the supper club because he decided it was too busy. Claimant testified that he intended, thereafter, to travel to his home to pick up his wife. He, his wife and a friend were planning to go out for dinner that evening. He also testified that he expected, after picking up his wife, to stop at two businesses to pick up accounting records. Before he reached home, and while he was still on a route which he could have logically taken to one of those businesses, claimant was injured in an automobile accident. The Administrative Law Judge found:

"Based upon the evidence presented, it is found that a dual purpose trip existed, but at the time of the accident, the claimant had deviated from the business purposes of the trip, and was engaged in personal activities. Therefore, it is found that the claimant's accidental injury on March 10, 1995 did not arise out of and in the course of his employment."

The Appeals Board agrees with the finding that the trip had a dual purpose. We do not agree, however, that the claimant had deviated from the business purpose at the time

of the accident. It appears that at the time of the accident, he remained on a trip that had a dual purpose, including the business purpose. Although we find no Kansas case directly on point, it appears the majority of the Courts hold that an injury occurring in the course of a dual-purpose trip should be considered compensable if the evidence establishes that the trip would have been necessary for business purposes even if the personal purpose for the trip had not existed. 1 Larson's Workmen's Compensation Law §18.20 (1995). From our review of the record, it appears that the trip would have been necessary solely for business purposes even if the trip had not also served a personal purpose. Therefore, the Appeals Board finds that the injuries claimant suffered should be considered compensable. The claim is remanded to the Administrative Law Judge for a determination regarding what temporary total disability and medical benefits, if any, should be awarded.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Alvin E. Witwer, dated September 18, 1995, should be, and the same is hereby, reversed. The claim is being remanded for a decision regarding temporary total disability benefits to be awarded, if any. The claim is also remanded for determination regarding what, if any, medical care should be provided.

IT IS SO ORDERED.
Dated this day of December 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: John G. O'Connor, Kansas City, Kansas Rex W. Henoch, Lenexa, Kansas Alvin E. Witwer, Administrative Law Judge Philip S. Harness, Director